

**STATE OF GEORGIA
COUNTY OF FULTON
CITY OF SOUTH FULTON**

ORDINANCE No. 2017-016

**ADOPTION OF ORDINANCE ESTABLISHING THE BOARD OF CODE
ENFORCEMENT FOR THE CITY OF SOUTH FULTON.**

AMENDMENT

Councilman khalid kamau offers the following amendment to Proposed Ordinance No. 2017-12, entitled "Adoption of Ordinance Establishing the Board of Code Enforcement for the City of South Fulton."

Revising the title as follows:

**ADOPTION OF ORDINANCE ESTABLISHING THE BOARD OF CODE
ENFORCEMENT FOR THE CITY OF SOUTH FULTON**

Revising the title of Chapter 4. as follows:

CHAPTER 4. – BOARD OF CODE ENFORCEMENT

Revising Section 3-4001, addressing the establishment of the Board, as follows:

Sec. 3-4001. – Board of Code Enforcement Established

- (a) *Creation.* There is hereby established a Code Enforcement Board which shall consist of eight members, residents of the city, who shall be appointed by the City Council as follows:
- (1) One member shall be nominated by each member of the City Council and the Mayor; and
 - (2) Each member shall be approved by a vote of the majority of the City Council.
- (b) *Terms.* The Code Enforcement Board members shall serve a term consistent with that of the member of the City Council (or the Mayor) making the nomination. A Code Enforcement Board member shall serve until his or her replacement is appointed by the City Council in a manner consistent with this ordinance. The Code

Enforcement Board members shall serve no more than two terms, either consecutive or non-consecutive, and a term shall end upon the swearing in or re-swearing in of the member of the City Council (or the Mayor) who nominates the Code Enforcement Board member.

- (c) *Chair and Vice Chair.* The Code Enforcement Board shall elect one of its members to serve as chairperson and another to serve as vice-chairperson. The chairperson and vice-chairperson of the Code Enforcement Board shall serve a term of one year or until reelected or a successor is elected. The duty of the chair shall be to conduct the meetings in accordance with the procedures set forth herein and any other rules or regulations established by the Code Enforcement Board. The vice-chairperson shall conduct the meetings in the chair's absence. The vice-chairperson may be appointed chair if the chair is removed from office, or due to a physical or mental disability, cannot perform the duties of chair.

(c) *Qualifications.*

- (1) Members of the Code Enforcement Board shall hold no other city office or city-compensated position during such member's term.
- (2) All Code Enforcement Board members shall be residents of the City.
- (3) No person shall preside at a meeting of the Code Enforcement Board as a member of the Code Enforcement Board until they have been certified as having completed a training session of eight hours.

(d) *Removal.*

- (1) Except as provided in paragraph (d)(2) of this Section, Code Enforcement Board members serve at the pleasure of the City Council and may be removed upon motion of the nominating commissioner and affirmative vote of a majority of the City Council.

- (2) Code Enforcement Board members shall automatically be removed from the Code Enforcement Board if they miss two consecutive meetings without the permission of the Chair, or if the Code Enforcement Board member fails to attend at least 75 percent of the Code Enforcement Board meetings in a 12 month period. The Code Enforcement Board secretary shall notify the City Clerk of any Code Enforcement Board member who does not attend a meeting. If a Code Enforcement Board member is removed for failure to attend meetings as set forth in his paragraph, the removal is automatic and does not require a vote of the City Council.

- (e) *Compensation.* The City Council shall, by resolution, determine the amount of compensation, if any, to be paid to the members of the Code Enforcement Board. In

the absence of such resolution, no compensation shall be provided to the members of the Code Enforcement Board.

- (f) *Jurisdiction.* The Code Enforcement Board shall have jurisdiction to decide matters and alleged violations ~~of the City Building Code~~ of all applicable codes and ordinances set forth in O.C.G.A. § 36-74-21(2) with the exception of state minimum standard codes provided in O.C.G.A. § 8-2-25 and ordinances and resolutions enacted pursuant to O.C.G.A. § 8-2-25.

Revising Section 3-4002, addressing officers and rules, as follows:

Sec. 3-4002. – Officers and rules.

The presence of four or more members shall constitute a quorum. The decisions of the Code Enforcement Board shall be by motion approved by a majority of those members present and voting, except that at least four members must vote in order for an action of the Code Enforcement Board to be official. The Code Enforcement Board member nominated by the Mayor shall not vote unless there is a tie. The City Attorney or his/her designee shall represent and be counsel to the Code Enforcement Board; provided, however, in the case of a conflict between the City Council and the Code Enforcement Board, the City Attorney shall represent the City Council.

The Code Enforcement Board shall adopt and publish policies, procedures and rules in keeping with the provisions of this chapter and submit the rules to the City Council for approval. If the City Council does not approve of the policies within three consecutive meetings of receiving such notice by the City Clerk, the rules shall be deemed adopted. Such policies, procedures and rules shall be available in the office of the City Clerk.

Revising Section 3-4003, addressing the Board Secretary, as follows:

Sec. 3-4003. – Code Enforcement Board Secretary.

A City employee shall serve as the Code Enforcement Board secretary. The secretary shall provide support to the Code Enforcement Board as reasonable and necessary to accomplish said Commission's duties. The secretary of the Code Enforcement Board shall provide the members of the Code Enforcement Board all information submitted to, or generated by, city staff on each substantive issue that the Commission considers, including: proposals, applications, citation(s), if any, as well as any other written communications given to the staff either in support of or in the opposition to the citation. The secretary shall be responsible for working with the City Clerk to maintain the records of the Code Enforcement Board.

Revising Section 3-4004, addressing meetings of the Board, as follows:

Sec. 3-4004. - Meetings.

The Code Enforcement Board shall establish its meeting schedule, and it shall meet at least twice a month. The Code Enforcement Board may cancel a meeting if there are no items to discuss, or for good cause. Additional meetings may be called by the chairman. All hearings before the Code Enforcement Board shall be open to the public except as provided by law. The alleged violator, the alleged violator's representative, the code inspector and any person whose interests are affected shall be given an opportunity to be heard. The Code Enforcement Board shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The Code Enforcement Board shall take testimony from the code inspector and alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. The initial presentation of each case before the Code Enforcement Board shall be by the code inspector.

Revising Section 3-4005, addressing hearings of the Board, as follows:

Sec. 3-4005. – Hearing.

- (a) *General.* No member of the Code Enforcement Board shall have the power to initiate enforcement proceedings under this chapter. If a violation of any provision of the Code of Laws is found, the code inspector shall notify the violator and specify a reasonable time to correct the violation. If the violation is corrected and then recurs or if the violation is not corrected by the time specified the code inspector may so notify the violator, but is not required to give the violator a reasonable time to correct the violation. If a violation is not corrected within the time specified, the code inspector shall request a hearing before the Code Enforcement Board.
- (b) *Notification.* If a repeat violation is found, the code inspector shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The code inspector, upon notifying the violator of a repeat violation, shall notify the Code Enforcement Board and request a hearing. The case may be presented to the Code Enforcement Board even if the repeat violation has been corrected prior to the hearing, and the notice for the violator shall so state. The matter shall be scheduled for the next available hearing before the Code Enforcement Board, and notice of the hearing shall be given as provided in section 3-7009.
- (c) *Violation presents threat to public welfare.* If the code inspector has substantial reason to believe a violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the code inspector shall make a reasonable effort to notify the violator and immediately notify the Code Enforcement Board and request a hearing.
- (d) *Continuance.* The Code Enforcement Board may continue the hearing from time to time for good cause. The Code Enforcement Board shall, in all instances, reach a decision within 15 calendar days from the date of the final hearing at which receipt of all evidence has been concluded.
- (e) *Postponed hearing.* When a quorum is not present, or the Code Enforcement Board is unable to reach a decision on a case, the hearing shall be postponed until the next

scheduled Code Enforcement Board meeting, with notification provided in accordance with section 3-7009 of this chapter.

(f) *Order to comply/order to pay fine.* Every order to comply and/or order to pay fine entered by the Code Enforcement Board shall be executed by the chairperson, or, in the chairperson's absence, the vice-chairperson, and shall be filed in the office of the secretary to the Code Enforcement Board.

(g) *Variances.* The Code Enforcement Board, when so appealed to and after a hearing, may vary the application of any provision of the construction codes to any particular case when, in its opinion, the enforcement thereof would do manifest injustice and would be contrary to the construction codes or public interest, and also finds all of the following:

(1) That special conditions and circumstances exist which are peculiar to the building, structure, or service system involved and which are not applicable to others.

(2) That the special conditions and circumstances do not result from the action or inaction of the applicant.

(3) That granting the variance requested will not confer on the applicant any special privilege that is denied by the construction codes to other buildings, structures, or service system.

(4) That the variance granted is the minimum variance that will make possible the reasonable use of the building, structure, or service system.

(5) That the grant of the variance will be consistent with the general intent and purpose of the construction codes and will not be detrimental to the public health, safety, and general welfare.

In granting the variance, the Code Enforcement Board may prescribe a reasonable time limit within which the action for which the variance is required shall be commenced or completed or both. In addition, the Code Enforcement Board may prescribe appropriate conditions and safeguards in conformity with the construction codes. Violation of the conditions of a variance shall be deemed a violation of the construction codes.

Revising Section 3-4006, addressing hearing notifications of the Board, as follows:

Sec. 3-4006. – Hearing notification.

(a) Notification of the Code Enforcement Board hearing to the alleged violator shall be given by certified mail, return receipt requested, hand delivery by the code inspector or other persons designated by the City, by leaving said notice at the violator's usual place of residence with any person therein who is over 15 years of age and informing

such person of the contents of the notice; or by leaving the notice at the violator's usual place of business with a manager or other upper level employee who is over 15 years of age and informing such person of the contents of the notice, no later than the 15th day before the date of the hearing. The notice shall be in a form approved by the City Manager and shall include a reference to the provisions of the Code of Laws and/or conditions of zoning being violated, and the date, time and location of the hearing.

- (b) At the option of the Code Enforcement Board, and in addition to the notice described above, or if repeated attempts at providing notice as described above are unsuccessful, notice of the hearing may be published 30 days prior to the hearing once a week for four consecutive weeks in the newspaper in which the sheriff's advertisements are printed for Fulton County. Proof of publication shall be provided and maintained for the official record.
- (c) Where efforts to provide notice pursuant to paragraph (a) of this section are unsuccessful, evidence of an attempt to serve the alleged violator pursuant to paragraph (a) together with proof of publication as provided in paragraph (b) shall be sufficient to show that the notice requirements of this section have been met, without regard to whether or not the alleged violator actually received such notice

Revising Section 3-4007, addressing decisions of the Board, as follows:

Sec. 3-4007 – Decisions of the Code Enforcement Board.

- (a) If, after the conclusion of the hearing, the Code Enforcement Board finds that a violation does exist, the Code Enforcement Board may issue an order to comply consistent with the powers granted in this chapter, with findings and conclusions. An order to comply shall set forth the street address or a description of the structure and/or premises sufficient for identification. An order to comply shall include notice that it must be complied with by a specified date and that an administrative fine may be imposed if the order is not complied with by said date. The order shall state the nature of the violation, and the Code Enforcement Board shall consider the following factors in determining the content of the order to comply.
 - (1) Existence or nonexistence of a life, health or other type of hazard to the occupant or others in the building or premises;
 - (2) Severity of the hazard or negative effect upon the community;
 - (3) Number and extent of separate items that must be completed in order to bring the building or premises into compliance with the relevant codes;
 - (4) Length of time the violation(s) has been known to exist and the amount of time the code inspector has previously given for compliance;
 - (5) The existence or nonexistence of mitigating factors which caused the building or premises to be in violation or which may affect the amount of time for compliance.

- (6) The Code Enforcement Board may divide the violation(s) into groups requiring compliance at various intervals, with inspections to be conducted at each stage by the code inspector.
 - (7) Whether the person coming before the Code Enforcement Board, or if the person is a corporation, whether any of its officers, members, or directors have been found liable for previous violations.
- (b) An order to pay fine shall specify the fine amount as determined and voted upon by the Code Enforcement Board, as well as the date and time the fine is due.
- (1) A certified copy of such order may be recorded in the public records of the City and shall constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property, and the findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchasers, successors in interest or assigns. If an order to pay fine is recorded in the public records pursuant to this subsection and the fine is paid by the date and time specified in the order, the Code Enforcement Board shall issue an order acknowledging that the fine has been paid in full and such order shall be recorded in the public records. A hearing is not required to issue such an order acknowledging the payment of a fine.
 - (2) The Code Enforcement Board may issue an order to pay a fine against the violator if the cited violation was not corrected within the time specified on the code inspector's notice or if an order to comply was not satisfied within the time specified in said order, even if said violation was corrected and brought into compliance prior to the hearing at which the fine was imposed.

Revising Section 3-4008, addressing notifications of decisions of the Board, as follows:

Sec. 3-4008. – Notification of decision.

The Code Enforcement Board shall provide the violator a copy of the order to comply and/or the order to pay fine by at least hand delivery or certified United States mail, postage prepaid and return receipt requested, within a reasonable period of time after the decision.

Revising Section 3-4009, addressing fines and fees, as follows:

Sec. 4-4009. - Fines and fees.

The Code Enforcement Board may impose fees and fines on a violator as follows:

- (1) A fine not to exceed \$1,000.00 per day for a violation involving the health or safety of a third party.

- (2) A fine not to exceed a total of \$1,000.00 for a violation not involving the health or safety of a third party.
- (3) The Code Enforcement Board shall determine fines considering the following factors:
 - a. The gravity of the violation;
 - b. Any actions taken by the violator to correct the violation; and
 - c. Any previous violations committed by the violator.
- (4) The Code Enforcement Board may reduce a fine imposed pursuant to this section.
- (5) Each day that the violation continues unabated shall be deemed an independent violation.

Revising Section 3-4010, addressing failures to pay fines, as follows:

Sec. 3-4010. - Failure to pay fine.

- (a) A certified copy of an order to pay fine may be recorded in the public records of the City and thereafter shall constitute a lien against the land on which the violation exists and upon any real or personal property owned by the violator. Upon petition to the Superior Court, such order may be enforced in the same manner as a court judgment by the sheriffs of the state, including levy against personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. After three months from the filing of any such lien which remains unpaid, the Code Enforcement Board may request that the county attorney foreclose on the lien.
- (b) No lien imposed under this chapter shall continue for a period longer than 20 years after the certified copy of an order to pay fine has been recorded, unless within that time an action to foreclose on the lien is commenced in Superior Court. In an action to foreclose on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fees, which it incurs in the foreclosure. The continuation of the lien affected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

Revising Section 3-4011, addressing remedies, as follows:

Sec. 3-4011. - Remedies.

Nothing contained in this ordinance shall prohibit the Code Enforcement Board, acting through the code inspector, from enforcing this ordinance by any other lawful means which include both criminal and civil proceedings; provided, however, that the Code Enforcement Board shall not pursue a specific instance of an alleged violation of the Code of Laws against the violator before both the Code Enforcement Board and a court authorized to hear violations of local ordinances.

Revising Section 3-4011, addressing appeals and transfers, as follows:

Sec. 3-4011. - Appeal and transfer.

An aggrieved party, including the City, may appeal a final administrative order of the Code Enforcement Board to the Superior Court of Fulton County by writ of certiorari.

The foregoing Ordinance No. **2017-016** adopted on _____ was offered by Councilmember **khalid**, who moved its approval. The motion was seconded by Councilmember **Baker**, and being put to a vote, the result was as follows:

“SECOND READING”

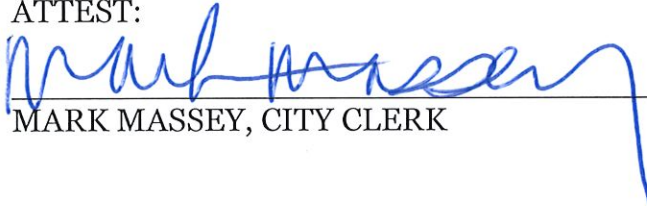
	AYE	NAY
William “Bill” Edwards, Mayor	_____	_____
Catherine Foster Rowell, Mayor Pro Tem	_____✓_____	_____
Carmalitha Lizandra Gumbs	_____✓_____	_____
Helen Zenobia Willis	_____✓_____	_____
Gertrude Naeema Gilyard	_____✓_____	_____
Rosie Jackson	_____✓_____	_____
khalid kamau	_____✓_____	_____
Mark Baker	_____✓_____	_____

THIS ORDINANCE adopted this 22nd day of August. CITY OF SOUTH
FULTON, GEORGIA

"SECOND READING"

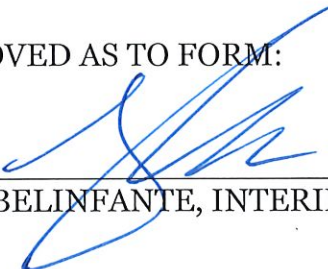

WILLIAM "BILL" EDWARDS, MAYOR

ATTEST:


MARK MASSEY, CITY CLERK



APPROVED AS TO FORM:

 Brian Lake,
W.E.P.
JOSH BELINFANTE, INTERIM CITY ATTORNEY